

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
Debtor. . Detroit, Michigan
August 19, 2014
9:00 a.m.

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HEARING RE. ORDER IDENTIFYING LEGAL ISSUES,
ESTABLISHING SUPPLEMENTAL BRIEFING SCHEDULE AND
SETTING HEARING DATES AND PROCEDURES - HEARING
RE. LEGAL ISSUE 6
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. Court is in session. Please
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Appearances, please.

4 MS. LENNOX: Good morning, your Honor. Heather
5 Lennox of Jones Day on behalf of the city, and with me is my
6 partner, Thomas Cullen.

7 MR. BENNETT: Good morning, your Honor. Ryan
8 Bennett of Kirkland & Ellis on behalf of Syncora.

9 MR. MONTGOMERY: Good morning, your Honor. Claude
10 Montgomery, Dentons US, for the Retiree Committee.

11 MR. NEAL: Good morning, your Honor. Guy Neal,
12 Sidley Austin, for National Public Finance Guarantee
13 Corporation.

14 MR. KOHN: Good morning, your Honor. Samuel Kohn of
15 Chadbourn & Parke on behalf of Assured Guaranty Municipal
16 Corp.

17 MR. HOWELL: Good morning, your Honor. Steven
18 Howell, Dickinson Wright, special assistant attorney general,
19 appearing on behalf of the State of Michigan. Thank you.

20 THE COURT: Okay. Let's proceed. Who's going
21 first?

22 MR. BENNETT: Good morning, your Honor. Ryan
23 Bennett again on behalf of Syncora. Your Honor, among our
24 objections to the debtor's plan, Syncora objected to the
25 settlement embodied in the plan among the debtor and the

1 majority UTGO unlimited tax general obligation bond insurers
2 and the -- and how that structure creates an impermissible
3 one under Michigan state law and, thus, violates 943(b) (4) of
4 the Bankruptcy Code. The Court raised an initial issue of
5 standing as part of the briefing, and Syncora did brief that
6 issue. In short, Syncora has constitutional, statutory, and
7 prudential standing to bring this objection. Syncora is a
8 creditor each in its capacity as an insurer, a holder, and
9 subrogee of COP claims, UTGO claims, and holder of various
10 other general unsecured claims. Each of these claims is
11 proposed to be materially compromised and nonconsensually so
12 under the debtor's plan.

13 Article III of the U.S. Constitution provides a
14 requirement that a personal -- that to have standing we have
15 a personal stake in the outcome of the controversy, and here
16 confirmation of the plan is that outcome, and we certainly
17 have a personal stake in that. On a statutory basis, Section
18 1109(b) permits a party in interest in any case to be heard,
19 and then Section 1128 of the Bankruptcy Code provides that a
20 creditor may object to confirmation, which is precisely what
21 this argument is today.

22 For purposes of prudential standing, some courts
23 have limited a creditor's standing to object only to the
24 provisions of a plan that relate to that particular
25 creditor's interest. Here, Judge, we're talking about the

1 UTGO settlement and the treatment of the UTGO claims.
2 Syncora is an UTGO claimholder as a subrogee and an insurer
3 of UTGO claims, and so it certainly is germane to Syncora's
4 interest for purposes of prudential standing.

5 We also, for purposes of prudential standing, also
6 have -- are the sole equity holder of a subsidiary that
7 actually pays property taxes in the City of Detroit, and
8 these property taxes among them include the actual UTGO tax
9 levy that is at issue here today. So that's our position on
10 standing, sir.

11 As to the objection, as you're aware, Syncora has
12 filed a number of objections to the plan. Today this issue
13 is whether the UTGO settlement and the plan's treatment of
14 UTGO claims violate Michigan's Unlimited Tax Election Act and
15 other applicable Michigan law. We believe that it does.
16 Specifically, the settlement dictates that the plan provided
17 for in this Court's confirmation order dictate a bifurcation
18 of the original UTGO claim amount and so that where 74
19 percent of the UTGO claim -- of the original -- or 74 percent
20 of the UTGO claims are refinanced with new bonds and taken
21 out, so the UTGO claimholders are fully entirely satisfied
22 under the plan, and 26 percent of those original claims --
23 those original bonds are kept outstanding in so-called stub
24 bonds with the interest in those bond proceeds being assigned
25 on behalf of all holders and all insurers who may have rights

1 to dictate that outcome assigned away to -- for the benefit
2 of the Retirement Systems.

3 This forces two outcomes, Judge. Number one, the
4 taxpaying citizens of Detroit are not required to continue to
5 pay a tax for something which they never approved as part of
6 the election process and the voting process. And, number
7 two, Syncora's interest in that 26 percent is being
8 nonconsensually assigned away without our permission or
9 approval.

10 Now, Article IX, Section 6, of the Michigan
11 Constitution provides that the terms --

12 THE COURT: How much in these bonds does your client
13 hold --

14 MR. BENNETT: We insure --

15 THE COURT: -- or insure?

16 MR. BENNETT: We insure approximately 40 million,
17 and we hold outright through subrogation, I think, about 6 or
18 7 million. So Article IX of the Michigan Constitution
19 provides that a municipality may impose taxes for the payment
20 of bonds approved by the electors. All right. And then
21 there's the statute that we've been referencing, the
22 Unlimited Tax Election Act, that provides the means by which
23 a municipality can seek approval of those taxes from its
24 electorate. And that particular section says that a city's
25 voters, quote, "may make one or more binding unlimited tax

1 pledges for payment of one or more tax obligations referred
2 to in the ballot." All right. So when this went out for
3 vote, all right, it was the -- the obligation that was sought
4 through this ad valorem tax was to pay the UTGO bonds, the
5 original issue UTGO bonds, not 74 percent of the UTGO bonds
6 and 26 percent to the Retirement Systems but the UTGO bonds.
7 All right. So the -- and then there's an additional --

8 THE COURT: Right, but what in law, federal or
9 state, prohibits the assignment that the plan proposes?

10 MR. BENNETT: Two things. State law. The state law
11 in Michigan looks to the substance of a transaction, not the
12 form. Here what you've got is an attempt to -- a very
13 creative, albeit, attempt to sidestep the electoral process
14 and funnel money from the taxpayers of the city to a
15 recipient whom they never intended it to go -- to whom they
16 never intended it to go. Number two, from a federal law
17 standpoint, Judge, what's happening here is it's not just the
18 interest of the folks in the room who reached a settlement
19 agreement *ex parte* of Syncora, you know. It is Syncora's
20 interest also in this 26-percent proceeds that's being
21 assigned away.

22 THE COURT: Well, but let's go back to argument
23 number one --

24 MR. BENNETT: Yes, sir.

25 THE COURT: -- before we get to number two.

1 MR. BENNETT: Um-hmm, sure.

2 THE COURT: How does the assignment violate the
3 voters' rights because it's the bondholders' rights that are
4 being assigned?

5 MR. BENNETT: Yes, but the bondholders via their
6 insurers who have the control are agreeing to take full and
7 complete satisfaction of their UTGO claim, their original
8 UTGO claim, and that was the claim that was subject to the
9 electorate's vote. And so now that that claim is being
10 satisfied in its entirety via this refinancing equal to 74
11 percent of the claim amount, the tax should reflect that
12 satisfaction and the refinancing based on the 74 percent,
13 not -- and not continue to levy --

14 THE COURT: Hold on.

15 MR. BENNETT: -- the hundred percent.

16 THE COURT: Yes. We need a break.

17 MR. BENNETT: Yes, sir.

18 THE COURT: Can we just sit here, or do you want me
19 to actually leave? Oh, all right. All right. We'll just
20 sit here.

21 MR. BENNETT: All right. No problem.

22 THE COURT: Have a seat.

23 MR. BENNETT: Okay. Thanks.

24 THE COURT: What should I say? Motion granted? Are
25 we all set?

1 UNIDENTIFIED SPEAKER: Yes.

2 THE COURT: Thank you. So if I can try to summarize
3 your argument --

4 MR. BENNETT: Um-hmm.

5 THE COURT: -- because normally a creditor can gift
6 or assign its rights vis-a-vis the debtor to anyone at any
7 time; right?

8 MR. BENNETT: Yeah. That's correct, sir.

9 THE COURT: That's not the problem. What you're
10 arguing is that the satisfaction of the UTGO bonds by the
11 reissuance at 74 percent gives the voters the right to have
12 their tax reduced accordingly or proportionately or whatever.

13 MR. BENNETT: Right, so in that --

14 THE COURT: Is that the argument?

15 MR. BENNETT: That is correct, sir, and that -- how
16 that works out under the Michigan law is there's the Uniform
17 Tax Election Act. That speaks to what the voters approved
18 the levy for; right? They approved it to pay the bonds,
19 not --

20 THE COURT: Right.

21 MR. BENNETT: -- the retirees. Then there's this
22 other complementary act, which the language in the
23 confirmation order -- the proposed confirmation order
24 language that the settlement is asking you to enter says that
25 you're going to approve --

1 THE COURT: Um-hmm.

2 MR. BENNETT: -- you're going to say that this --
3 the settlement complies with, it's under the Revised
4 Municipal Finance Act. And that says when any municipality
5 completes the retirement of a debt evidenced by a municipal
6 security, here the prior UTGO bonds, the county treasurer
7 shall no longer be required to recognize a levy for that
8 debt. Okay. So that's the statutory realization of the
9 conclusion you just kind of reiterated to me.

10 THE COURT: Um-hmm. Okay.

11 MR. BENNETT: So taken together, these two statutes,
12 the UTEA and RMFA, provide that qualified electors may
13 approve unlimited tax levies of ad valorem taxes. The city
14 cannot levy more taxes than necessary to pay the obligations
15 approved by the voters, and when sufficient funds have been
16 collected to retire the obligations, no further taxes will be
17 levied. But the city's plan provides that on account of, you
18 know, the allowed 388 million original UTGO claim, the UTGO
19 holders in full satisfaction of those allowed claims shall
20 receive new bonds equal to that 74-percent amount we talked
21 about and -- but, however, under the Revised Municipal
22 Finance Act, the levy as to the 26 percent should cease. If
23 they want to have a -- if they want to be able to roll the
24 levy over as to the 74 because they are unlimited tax bonds
25 and because they are the basis that the voters approved the

1 taxation under the UTEA, they can do that but not as to the
2 26 percent going over to the retirees. As I said, the city
3 has engineered and the UTGO insurers have engineered this
4 very creative clever form over substance argument, but courts
5 in the Sixth Circuit and in Michigan do not recognize form
6 over substance. They look to substance when it comes to this
7 type of argument, and the substance is that the taxpayers did
8 not approve a tax levy for the payment to the retiree
9 systems. They approved it for payment of the UTGO bonds, and
10 those bonds are being retired as part of the plan, the result
11 being that if the plan is confirmed, your Honor, the city
12 will be permitted, in fact, required to unlawfully tax its
13 property taxpayers where such taxation would not be permitted
14 under Michigan law, and this is why the plan violates
15 943(b)(4) and it's why the plan cannot be confirmed.

16 THE COURT: And just to clarify the record on one
17 point you made earlier, what is the property in the city that
18 Syncora or one of its affiliates owns or has an interest in
19 and pays property tax on?

20 MR. BENNETT: I would have submitted this, but, you
21 know, it wasn't supposed to be evidentiary hearing, you know,
22 so I --

23 THE COURT: Just tell me. What is --

24 MR. BENNETT: But, yeah, but --

25 THE COURT: Tell me what it is.

1 MR. BENNETT: For the Court's clarification, that
2 property is -- it's located on Atwater Street, so that's the
3 street that I believe runs into the Windsor Tunnel, so it's
4 right there at Jefferson and Atwater right by the Ren Cen.
5 It's a facility, and then it's also related to the tunnel
6 concession lease that we share.

7 THE COURT: Thank you, sir.

8 MR. BENNETT: Yeah, yeah. Thank you, Judge.

9 THE COURT: All right. Anybody else in support of
10 the objection? All right. Ms. Lennox.

11 MS. LENNOX: Thank you, your Honor. Like Mr.
12 Bennett did, I'd like to start with standing. We, too,
13 briefed this, and I think there are two components to this.
14 One is the traditional standing analysis, and another one is
15 what does the statute -- what do the statutes in Michigan
16 tell us.

17 With respect to the traditional standing analysis,
18 we argue that Syncora suffers no injury that all other Class
19 8 claimholders suffer, meaning the impairment of their claim,
20 so under the Lujan standard, we believe there's no
21 particularized injury to Syncora which would grant it
22 standing to pursue its argument. And let's talk about the
23 argument because what Syncora is complaining about is not
24 what it's getting in the plan. It's perfectly fine with the
25 74 percent that it's getting. It's not objecting to that.

1 What it's objecting to is what it's not getting in the
2 compromise of the claims. We argue that Syncora has no
3 legally protected interest under the UTEA or the RMFA; that
4 Syncora is raising arguments that belong to someone else,
5 someone else's statutory right, the taxpayers' right. Under
6 Michigan law, only the Michigan Department of Treasury has
7 the right to enforce issues under the RMFA, and Michigan law
8 is pretty clear that when a statute creates a right or
9 imposes a duty and it contains comprehensive administrative
10 or other enforcement mechanisms or otherwise entrusts the
11 responsibility for upholding the law to a public official,
12 then there's no private cause of action. Here Michigan
13 statute 141.2201 states that the Michigan Department of
14 Treasury is authorized and directed to protect the credit of
15 this state and its municipalities and to enforce the
16 provisions of this act, so the enforcement for this statute
17 rests with one body, and there's no private cause of action
18 that exists under Michigan for somebody like Syncora to come
19 and make these arguments to your Honor.

20 Now, I would also note that I think the subsidiary
21 they're referring to is American Roads, which operates part
22 of the tunnel.

23 THE COURT: Is what?

24 MS. LENNOX: American Roads, which operates part of
25 the tunnel. Is that correct?

1 MR. BENNETT: That's an affiliated name, yeah. The
2 actual entity is Detroit Windsor Tunnel, LLC.

3 MS. LENNOX: Detroit Windsor Tunnel, LLC, is a
4 separate corporate body. It is not -- doesn't insure any of
5 our bonds. It's not a creditor in this case. And unless
6 Mr. Bennett would like to concede that Syncora Guarantee and
7 this LLC entity are one and the same, alter egos piercing the
8 corporate veil, the entity that might try to bring a private
9 cause of action is not before you, so under all of those
10 theories, we believe --

11 THE COURT: And so the one entity that does have
12 standing is the State of Michigan?

13 MS. LENNOX: Yes, sir.

14 THE COURT: And what is the State of Michigan's
15 position on whether this settlement violates Michigan law?

16 MS. LENNOX: Well, Mr. Howell can certainly
17 elucidate for himself, but the State of Michigan is well
18 aware of this settlement. We've had many conversations with
19 it, particularly because in order to effect the provisions
20 under the plan, we have to go through the MFA for the
21 refunding bonds, and nary an objection has been raised, to my
22 knowledge, but --

23 THE COURT: How do you deal with the argument that
24 even if Michigan law wouldn't give Syncora standing to
25 challenge this deal, the Bankruptcy Code itself does?

1 MS. LENNOX: Again, this --

2 THE COURT: And the specific provisions were cited.

3 MS. LENNOX: What Syncora is doing here, again, is
4 not challenging its treatment under the plan. It's fine with
5 its treatment under the plan. Didn't even raise an unfair
6 discrimination argument with respect to it. What it is
7 challenging is a right that's outside of this bankruptcy.
8 It's trying to assert the right of a taxpayer when it is not
9 a taxpayer, and the Michigan statutes only give the right to
10 enforce that to the treasury, so this is -- this goes well
11 beyond a confirmation objection.

12 THE COURT: Well, but it says it objects to the
13 plan.

14 MS. LENNOX: Um-hmm.

15 THE COURT: And the Bankruptcy Code says any party
16 may file an objection to the plan, and this is one of its
17 objections.

18 MS. LENNOX: And the prudential standing -- or
19 prudential constitutional standing says you cannot assert a
20 right to object to a plan that is somebody else's right even
21 if it might affect you, and I would argue this doesn't affect
22 them at all, but even if it might affect you, you can only
23 assert in a confirmation objection objections to parts of the
24 plan that affect you personally.

25 THE COURT: And what's your strongest case for that

1 proposition that you would rely on?

2 MS. LENNOX: Hold on a minute, your Honor. Well, I
3 think we -- well, certainly in the county briefing we cited
4 several of the cases, but there's Lehman Brother Holdings,
5 which is a Southern District of New York case out of 2012.
6 Mount Carbon Metropolitan District is a Chapter 9 case out of
7 the Bankruptcy District of Colorado from 1999. We also have
8 Revco, which is a Second Circuit case coming out of 2007. We
9 also have -- and I left it in -- I left it in my stack of
10 papers, but there's a JPMorgan versus I think it's Welsh case
11 that came out of the Sixth Circuit in I believe 2012 or 2013
12 all standing for the proposition that in order to bring a
13 case, you're the one that has to be injured. You can't bring
14 somebody else's rights before the Court to be adjudicated.

15 THE COURT: Okay.

16 MS. LENNOX: So let's turn to the merits of this,
17 and you can only evaluate the merits of this if you actually
18 read the statute and read what the words say, and I think
19 what Syncora tries to do in their argument is to muddle
20 around the statute and conflate concepts in the statute and
21 how the statute actually works, so what I'd like to do, your
22 Honor, is actually parse the statute for you. And before I
23 get into the statutory provisions, I do want to make clear --
24 and I don't think Syncora challenges this -- that in the plan
25 we -- by virtue of the plan, by virtue of refunding \$287.5

1 million that will go to the bondholders, and that is their
2 sole treatment under the plan, and by retaining outstanding
3 the remainder stub UTGO bonds, we are not raising the amount
4 of taxes that were originally approved by the voters. We are
5 not extending the maturity date, so they won't be taxed for
6 any longer period, and we are not taxing beyond what was
7 originally proposed by the voters, so we believe, in general,
8 that we satisfy Michigan statute 141.164(3), which says the
9 tax which may be levied shall not be excess of a rate or
10 amount sufficient for payment of the obligations. We are not
11 paying more than the voters originally approved.

12 So let's talk about the statute. First, the voters
13 approved the borrowing of money to satisfy debt obligations
14 for certain public projects. Specifically, and we quote
15 these in our papers, Section 4.3 of the UTEA provides that,
16 quote, "Upon the approving vote of a majority of the
17 qualified electors of the public corporation voting on the
18 question, the public corporation may make 1 or more binding
19 unlimited tax pledges for the payment of 1 or more tax
20 obligations referred to in the ballot." What the voters do
21 is they approve the issuance of bonds if the vote passes.
22 After the vote is approved, the city then levies a tax in
23 order for there to be money to repay the obligation, but the
24 voters vote to incur debt. A different section of the UTEA
25 talks about notifying the electorate about the purpose of the

1 levee to be -- for which the bonds will be issued. Section
2 5.3 of the UTEA states that, quote, "The notice of the
3 election shall set forth a brief general description of the
4 purpose of each unlimited tax pledge, a statement of the
5 estimated period of time over which the tax obligation is
6 expected to be issued, and other information as the
7 legislative body of the public corporation deems to be
8 necessary to adequately inform the electors." In fact,
9 that's what happened.

10 THE COURT: So your argument is what the voters
11 approve is the issuance of debt, not the incurrence of the
12 tax. The incurrence of the tax is done separately by the
13 taxing authority.

14 MS. LENNOX: That is correct. And I might also add,
15 as a matter of fact, that when the electors approved the
16 issuance of the bonds, the city then levied a tax to repay
17 the bonds, and, in fact, the proceeds of the bonds that the
18 city then received were actually used for the projects
19 disclosed in the ballots that Syncora attached to their
20 second supplemental objection, so the voters got their
21 projects. The debt that they approved was issued. The
22 projects -- the purposes for which the bonds were issued have
23 been fulfilled. The projects were completed. Step one in
24 the process of how the statute works is completed, so now we
25 move on to the plan, and that's step two.

1 Now the bonds are issued, and the city has to pay
2 for them. The taxpayers are out of this equation now, so
3 here's where the plan comes in. What the plan does is it
4 treats the claims of the holders of the bonds, the city's
5 repayment obligations to them on account of the bonds that
6 were issued, and it does so by saying -- by compromising
7 their claims in bankruptcy, which I don't think anybody
8 questions that that's what bankruptcy is for. It does so by
9 giving them about 74 percent on a present value basis of the
10 bonds that were outstanding when the case was filed. That's
11 their sole treatment. That's what they get. That's the
12 value of what they're going to receive from the city on
13 account of their claims. Again, Syncora doesn't complain
14 about any of this. It's perfectly happy with what it's
15 getting in the settlement. I didn't see any complaints in
16 their objection papers about the actual treatment of the
17 Class 8 claims. What they're complaining about is what
18 they're not getting. Again, the stub UTGO bonds will remain
19 outstanding. They represent the remainder of the original
20 issuance, and the payments that come from the taxes to the
21 city will be redirected pursuant to the plan to another
22 creditor group, to the income stabilization funds and to GRS
23 as part of their recovery under the plan. So what Syncora is
24 trying to allege -- or actually, your Honor, what they state
25 in their second supplemental objection is, like the MF Global

1 case, we are somehow affecting their rights against third
2 parties. We're not affecting -- there's no third-party claim
3 that is being assigned. The UTGO claims are claims against
4 the city, not against a third party, so that whole MF Global
5 discussion in their objection is irrelevant as are the Dow
6 Corning factors because we are not affecting a third-party
7 release. It doesn't matter that the city will continue to
8 repay certain of the bonds that will remain outstanding and
9 have those payments assigned to another creditor group.
10 Nothing -- your Honor asked what prevents it in state law.
11 Nothing in the UTEA or the RMFA prohibits this.

12 THE COURT: Okay. So how do you deal with the
13 statute -- with the state statute on which Syncora relies,
14 which says something like when the bonds are paid, the taxes
15 shall stop?

16 MS. LENNOX: That's exactly what's happening here.
17 These bonds remain outstanding, and when the millage is
18 collected, those bonds will be retired. That's exactly
19 what's happening here.

20 THE COURT: Their argument -- yeah. Their argument
21 is that the plan satisfies all the bonds by which --

22 MS. LENNOX: That is not true.

23 THE COURT: -- yeah -- by which I assume they mean
24 to include the stub UTGOs, by the payment of the -- of 74
25 percent on all of the bonds.

1 MS. LENNOX: The plan does no such thing. The plan
2 satisfies the Class 8 claimants' claims on account of the
3 bonds and compromises them at 74 percent present value of
4 their claims. Those bonds that represent that, they will get
5 new bonds that represent that payment obligation going
6 forward. The bonds themselves are not -- those bonds will be
7 converted into new bonds. The stub bonds -- the plan is very
8 clear about this -- will remain outstanding. Those bonds
9 aren't going anywhere.

10 THE COURT: So the plan only satisfies 74 percent of
11 the outstanding bonds; is that right?

12 MS. LENNOX: It satisfies 74 percent of the
13 outstanding claims by issuing new refunding bonds. They get
14 a bond for a bond, and their recovery under the plan is 74
15 percent present valued. We still have the other bonds that
16 are out there. We could have canceled them. We didn't. We
17 are using those bonds, and -- as the voters already approved
18 a millage to pay for those bonds, and we are assigning the
19 proceeds to another creditor group. The taxpayers are not
20 harmed. The taxpayers are not paying a penny more than what
21 they originally voted to pay, and so simply it is a -- it is
22 a complicated structure. Mr. Bennett is right. But if you
23 parse through the statute, it works with the statute. It is
24 not prohibited by the statute. It is perfectly proper under
25 Michigan law, and we certainly haven't heard any objections

1 from the state to the contrary. Thank you.

2 THE COURT: Anyone else in support of the city's
3 position here?

4 MR. KOHN: Your Honor, again, for the record, Samuel
5 Kohn of Chadbourne & Parke on behalf of Assured Guaranty
6 Municipal Corp., an insurer of several series of unlimited
7 tax obligation bonds issued by the City of Detroit. Your
8 Honor, I don't rise to address the legal issues, but in
9 accordance with our obligations under the settlement
10 agreement on behalf of Assured, Assured supports the
11 treatment of Class 8 of the unlimited tax obligation bond
12 claims as set forth in the city's corrected fifth amended
13 plan dated July 29th, 2014.

14 THE COURT: Okay.

15 MR. KOHN: Thank you.

16 THE COURT: Thank you, sir.

17 MR. NEAL: Good morning again, your Honor. Guy
18 Neal, Sidley Austin, for National Public Finance Guarantee in
19 its capacity as an insurer in this instance of the unlimited
20 tax general obligation bonds. I haven't oft had to say this,
21 but I rise to join in the argument of the city. We support
22 the settlement wholly. It's the product of hard-fought
23 litigation at the outset and then extensive arm's length
24 mediation, so we are fully supportive of the settlement and
25 the arguments of the city today. Thank you.

1 THE COURT: Thank you.

2 MS. ENGLISH: Excuse me, your Honor.

3 THE COURT: Yes. Who's on the phone?

4 MS. ENGLISH: Hi there. This is Caroline English
5 from Arent Fox on behalf of Ambac Assurance Corporation.

6 THE COURT: Go ahead.

7 MS. ENGLISH: Note for the record our appearance as
8 well and lend our voices in support of the plan and the
9 arguments made by Ms. Lennox.

10 THE COURT: Thank you. Anyone else on the phone
11 wish to be heard? Okay. Mr. Howell.

12 MR. HOWELL: Thank you, your Honor. Again, Steven
13 G. Howell, Dickinson Wright, appearing on behalf of the State
14 of Michigan. Your Honor, we support the debtor's plan. We
15 support the treatment that has been described here today, and
16 the state has no objection to the way this has been handled.

17 THE COURT: So the state's position is that the plan
18 does comply with Michigan law?

19 MR. HOWELL: Yes, your Honor.

20 THE COURT: Thank you, sir. Any rebuttal, sir?

21 MR. BENNETT: Thanks, Judge. Ryan Bennett on behalf
22 of Syncora. Couple of things really quick. On the standing
23 points, as the Court correctly noted, we're not here suing to
24 enforce the UTEA or the RMFA. We're objecting to a plan
25 under 943(b)(4). And that's -- you know, the issues about,

1 you know, our subsidiary and its taxing rights, I mean I
2 think they're -- we brought them forth because I think the
3 city said that we didn't have any interest, but we do. We're
4 a sole equity holder, and to the extent our subsidiary is
5 forced to pay improper taxes, we're ultimately harmed as a
6 result of that improper payment, but the real driver here is
7 the fact that we're objecting to confirmation as a creditor,
8 as a participant in the UTGO class and as a party that's
9 subject to this forced assignment of our rights. Ms. Lennox
10 cited the Mount -- was it the Mount Carbon -- yeah --
11 opinion. We also cited that in our papers because, in
12 addition to what Ms. Lennox was referencing, I think, more
13 profoundly, the Mount Carbon opinion addresses how the Court
14 has its own independent obligation to assess the standards of
15 943, good faith, feasibility, whether the plan is lawful.
16 All right. As this Court has recognized in the past in our
17 other hearings, the adversary process assists the Court in
18 processing that obligation, and we're here, you know, to
19 assist the Court in recognizing that.

20 THE COURT: Well, and I accept and respect all of
21 that, but nothing in that argument by itself provides a party
22 with standing that otherwise wouldn't have it, does it?

23 MR. BENNETT: Other than our primary point that we
24 are a creditor. We're a holder of UTGO claims, an insurer of
25 UTGO claims, and all the points I made in my initial standing

1 argument.

2 THE COURT: Okay.

3 MR. BENNETT: Let's see. What other points did I
4 want to make here? You know, additionally, you know, as far
5 as standing, Ms. Lennox also said that, you know, we're not
6 happy with -- you know, we're fine with what we're getting as
7 far as our treatment is as an UTGO claimant, but we're upset
8 with what we're not getting. I don't know how that works;
9 right? I mean, you know, let's say we're getting five cents
10 on the dollar; right? Well, we're fine with that five cents,
11 but we're upset about the 95 cents that we're not getting? I
12 don't -- that argument doesn't make logical sense to me as an
13 objector, so I mean we -- you know, we're challenging this
14 unlawful assignment. We're at 26 percent of value being
15 transferred away without our consent, and we did not agree to
16 that unlike the other UTGO insurers that stood up here today.

17 There was some talk about -- you know, as to the
18 substance, there was talk about the ballots and this notion
19 of like debt, you know, do they speak to the incurrence of
20 debt or do they speak to the actual projects. And if you
21 look at the ballots that we attached to our filing, which are
22 examples of UTGO ballots that went out to the electorate,
23 they actually speak to the projects, to the acquisitions, the
24 construction of a jail, of parks, of -- you know, and they
25 don't speak to the incurrence of debt, period. They speak

1 to, you know -- they speak to the actual projects. There is
2 nothing -- there's no ballot that exists out there, Judge,
3 that says for the Retirement Systems on account of income
4 stabilization.

5 THE COURT: Well, assuming that's true, is it also
6 true, as the city asserts, that the ballot does not -- the
7 approval of the ballot by itself does not constitute a tax
8 levy? That's done by the local taxing authorities after the
9 debt is issued; right?

10 MR. BENNETT: But it has to -- but that levy has to
11 be performed underneath these laws, the Uniform Tax Election
12 Act, which requires the tax to be levied for the purpose of
13 the ballot, for the purpose --

14 THE COURT: Right, but your argument is based on the
15 premise that because the voters approved the levy, the voters
16 have a right to see that the levy they have approved is used
17 for the purpose that they have approved it for. The city
18 argues that the electors don't approve the levy at all. All
19 they approve is the issuance of the debt.

20 MR. BENNETT: And once that debt is paid in full,
21 the levy shall cease under the Revised Municipal Finance Act,
22 so the --

23 THE COURT: Well, but to that the city says, and how
24 do you respond, that there will be bonds out there. What's
25 the matter?

1 MR. BENNETT: No. I was like -- I stumbled on
2 municipal, so I was just saying it over again. Sorry.

3 THE COURT: Practicing? Okay. So the city says
4 that after the plan is approved, if it is, there will be
5 bonds out there unsatisfied, the so-called stub UTGOs, as to
6 which nothing in Michigan law prohibits the continued levy.

7 MR. BENNETT: Right, and that's -- that was my final
8 point actually --

9 THE COURT: Okay.

10 MR. BENNETT: -- Judge, is that I think when
11 Ms. Lennox said earlier in response to the colloquy was that
12 only 74 percent of the claims are being satisfied, well,
13 that's not true. It's a hundred percent of the UTGO claims,
14 the claims of the UTGO holders are being satisfied under the
15 plan. Seventy-four percent of the bonds are being refinanced
16 as a means of satisfying that hundred percent of claims, but
17 the actual claims, the debt that was incurred for the purpose
18 on the ballot are being satisfied in their entirety. And as
19 a result of that hundred percent satisfaction -- I mean the
20 language of the plan is very clear on the point -- that --
21 let me just read it to you, Judge -- "each holder of an
22 allowed UTGO bond claim, in full satisfaction of such Allowed
23 Claim, the treatment of claims under the plan will be in
24 exchange for and in complete satisfaction, discharge and
25 release of all claims arising on or before the Effective

1 Date," so the treatment of these claims -- the receipt of the
2 74 percent refinanced bonds completely satisfies the debt
3 which was raised for the purpose on the ballot, and,
4 therefore, that levy must terminate under Michigan law.

5 THE COURT: Thank you.

6 MR. BENNETT: All right. Thank you, Judge.

7 THE COURT: Ms. Lennox, anything further?

8 MS. LENNOX: No. Thank you, your Honor.

9 THE COURT: All right. The Court will take this
10 matter under advisement. Would anyone else like to raise
11 anything else here this morning? All right. We're in
12 recess.

13 THE CLERK: All rise. Court is adjourned.

14 (Proceedings concluded at 9:41 a.m.)

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WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

August 21, 2014

Lois Garrett